

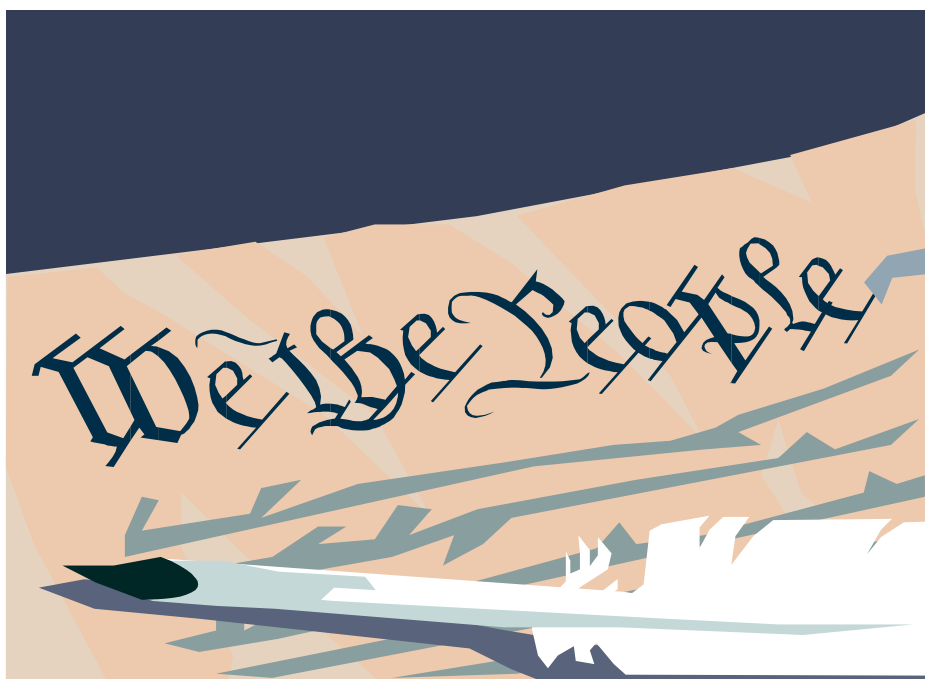
**ASSISTING THE INDIANA JUDICIAL SYSTEM:
SOLUTIONS TO SELF-REPRESENTATION**

Project Report

By:

The Indiana Supreme Court Pro Se Advisory Committee

May 2002



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**State
Justice
Institute**



Indiana Supreme Court

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Indiana Supreme Court

This publication is a report is based on the first year of the Indiana Pro Se Project funded through a grant from the State Justice Institute (SJI-01-N-001), and matching funds by the Indiana Supreme Court. Points of view expressed herein do not necessarily represent the official position or policies of the Indiana Supreme Court or the State Justice Institute.

FOREWARD

This Report is the final product of a pro se project created to extend access to the justice system for all litigants, including those not represented by an attorney. This project was funded by a \$50,000 grant from the State Justice Institute (SJI-01-N-001), and by cash and in-kind contributions from the Indiana Supreme Court totaling \$63,538.

The Project resulted from an action plan developed by the Indiana state team that attended the National Conference on Pro Se Litigation held in Scottsdale, Arizona, held November 13 - 21, 1999. Team members included Judge David Coleman, Hendricks Superior Court No. 2, Judge Gregory Donat, Tippecanoe County Court No. 1, and Staci Terry, an attorney formerly with Indiana Legal Services, Inc.

The state team further refined the action plan at the Justice Management Institute workshop, "Designing Effective Pro Se Litigation Programs," held May 22 - 24, 2000, in Minneapolis, Minnesota. This state team included the three original members as well as Terry Ross, the librarian at the Marion County Law Library, and Lisa Allen, the former director of Community Relations for the Marion County Superior Courts. At the Minnesota conference, the state team was able to exchange information with other jurisdictions and view the Hennepin County court system pro se assistance program. This experience allowed the team to move beyond the conceptual nature of the original action plan and determine the next steps needed to take in creating a statewide pro se initiative in Indiana.

The mechanism chosen to implement the plan included the creation of an advisory committee. The Pro Se Advisory Committee consisted of judges, court clerks, librarians, lawyers, and legal educators. The goals of the Indiana Pro Se Project were supported by the Indiana Supreme Court.

Indiana has a large population of citizens whose legal needs are not being met. As a result, the number of pro se litigants is substantial. Besides this Project, Indiana's pro se resources or assistance programs are limited. In response, the Indiana Supreme Court is dedicated to building a statewide pro se assistance network that will provide basic resources to pro se litigants by establishing the usage of uniform pro se forms and encouraging local courts and county clerks to develop their own pro se assistance

programs. The Project is committed to develop this new idea that benefits society by making government and the judicial system open and fair. The Project is coordinating this effort with local court systems, bar associations, district pro bono committees, and legal services providers.

PROJECT ABSTRACT

The Indiana Pro Se Project was instrumental in educating many Hoosiers about the pro se phenomenon. We were able to create awareness about the issue that was not present before. Furthermore, we were able to create a project that people respect, support, and use.

Normally, pro se initiatives are rejected because of the perception they create problems for courts, even though they are created to ease the challenges of pro se litigants. This Project had the approval of the Indiana Supreme Court and included several judges and clerks as key members of the initial task force and the Pro Se Advisory Committee. The mechanism chosen to implement the plan included the creation of an advisory committee. The Pro Se Advisory Committee consisted of judges, court clerks, librarians, lawyers, and legal educators. This encouraged people to view our project with an open mind, which encouraged approval in a number of constituencies.

A key factor to our success was that we did not bombard our courts with hundreds of court forms with the hopes that this would solve the pro se problems. We concentrated on education. We tried to educate judges, court staff, court and public librarians, and the pro se litigant about all the issues involved when one represents himself. This should be the primary goal of new pro se projects in other states ... the education of all involved.

ACKNOWLEDGEMENTS

I will start by thanking the members of the Pro Se Advisory Committee for their dedication and hard work. This Project started from the ground up, which made the Committee's task of creating a statewide initiative challenging. Furthermore, most Committee members reside outside of Indianapolis so much traveling was undertaken to see this Project through.

I want to thank all the judges, clerks, librarians, and court staff personnel that gave us valuable input about the issues involved with pro se representation. The Committee sought first-hand experiences about problems due to pro se representation and what steps should be taken to create solutions.

This Project would not have become a reality if not for the vision and leadership of Chief Justice Randall T. Shepard. The Project operated under the direction and supervision of Lilia Judson, Executive Director of the Indiana Supreme Court Division of State Court Administration, and David Remondini, Counsel to the Chief Justice, both of which have given us unconditional support. I also thank Jennifer Cleaver, Account Administrator at the Division of State Court Administration, for keeping the Project's budget in check.

I want to thank the staffs at the Division of State Court Administration and at the Indiana Judicial Center for always being available to answer questions and assist in various tasks. Jane Seigal, Executive Director of the Indiana Judicial Center, and her staff did a wonderful job in creating and presenting "Access to Justice for the Self-represented and Indigent Litigant" judicial conference on December 7, 2001. The day long event concentrated on pro se issues. 222 Indiana judicial officers attended. This setting provided the Committee with an excellent opportunity to advertise the Project, discuss its goals, and answer questions that judges had about the Project and pro se in Indiana.

Sincerely;

Anthony Zapata
Pro Se Project Director
May 2002

INDIANA SUPREME COURT



Chief Justice Randall T. Shepard

Justice Theodore R. Boehm

Justice Brent E. Dickson

Justice Robert D. Rucker

Justice Frank Sullivan, Jr.

INDIANA DIVISION OF STATE COURT ADMINISTRATION

Lilia Judson
Executive Director

INDIANA SUPREME COURT PRO SE ADVISORY COMMITTEE

Hon. J. David Holt, Chair
Greene Superior Court

Lisbeth A. Blosser
Allen County Clerk

Hon. David Coleman
Hendricks Superior Court No. 2

Hon. Natalie Conn
Grant Superior Court No. 3

Hon. Kathleen Coriden
Bartholomew Superior Court No. 2

Hon. Gregory Donat
Tippecanoe Superior Court No. 1

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David Remondini
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Terri Ross

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Magistrate Ann K. Smith

Sullivan Circuit/Superior Courts

Hon. Nicholas L. South

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Staci Terry

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and,

Anthony Zapata

Pro Se Project Director, Indiana Division of State Court Administration.

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D) Introduction

The Indiana Supreme Court (the Court) appointed the Indiana Supreme Court Pro Se Advisory Committee (the Committee) in April 2001 to continue the work of the original state team that attended the Scottsdale and Minneapolis pro se conferences and oversee the Indiana Supreme Court Pro Se Project (the Project). The Committee is responsible for monitoring and approving the actions of the Pro Se Project Director (the Director), making recommendations to the Court on the issues of pro se litigation, and developing a comprehensive strategy plan for future pro se efforts. Monthly meetings of the Committee and Project staff occur for the purposes of approving project staff actions, policy, and discussing future actions. The Pro Se Project Director, Anthony Zapata, was retained in August 2001. He manages the day-to-day operations of the Project under the guidance of Indiana Supreme Court Pro Se Advisory Committee.

The main objective of the Project is to increase access to Indiana's justice system by continuing to provide resources for pro se litigants. In creating additional resources and educational materials geared toward the pro se litigant, the Indiana Supreme Court will contribute to meeting the legal needs of Indiana citizens. The Project is committed to develop and expand the central idea that government and the judicial system be open and fair to citizens. Through the Project, the Court will develop a system of uniform pro se forms and prototype pro se initiatives that will assist individual state courts and legal services providers in addressing the needs of the self-represented litigant. By establishing formal mechanisms to educate and prepare self-represented litigants and trial court staff, the Court will improve access to and public confidence in the justice system.

In its first year of operation, the Project has made a worthy and significant impact on the judicial system. The Project created a Self-Service Legal Center Website that provides substantial information for the self-represented. Since its inception in late October 2001, the site has received over 23,000 “hits” through April 2002. It has averaged over 80 “hits” per day, and has ranked among the top five pages on the Indiana Judiciary Website two times.

The Project has developed five court forms with instructions that can be used by a person seeking a continuance, a contempt citation, a fee waiver, a name change, or a divorce without children. The Project has also created three court petitions that have

Spanish instructions and both Spanish and English court forms that can be used by a Spanish speaking person seeking a divorce without children, a continuance, or an interpreter.

The Project also adopted a sixteen-page training manual entitled “Legal Advice Versus Legal Information, Do You Know the Difference?” that assists court staff in answering questions by litigants. The Project has developed a descriptive sheet that lists how the court staff can and cannot help a litigant because of the prohibition on providing legal advice. This sheet is intended to replace the traditional notice posted on courtroom doors and windows that states “Court Staff Cannot Give Legal Advice.”

In addition, the Project has assisted local pro se projects in three counties.

First, the Tippecanoe County Pro Se Project has created a court house orientation video, provided for staff training, and is using court staff to review and mediate all of their small claims cases in which the parties agree to use a mediator. Since its inception in 2001, over 70% of those small claims cases settle without litigation through use of a mediator.

The second project in Monroe County uses different techniques to assist the self-represented. The Project is partnered with Indiana Legal Services, Inc. (ILS) for the Monroe County project. A person calls ILS in Monroe County for assistance. If no ILS attorneys can take the case, a pro bono attorney is selected from the ILS pro bono pool or the Pro Bono District 10 pro bono pool. If no attorneys on either list are available, the person is sent the appropriate pro se forms. They can call back with questions and are referred to an ILS attorney or pro bono attorney to answer questions about the forms or their case.

The Project is assisting Marion County officials in responding to the self-represented. Marion County is addressing pro se needs within the confines of other projects that are necessary prior to any pro se center for this large community. Marion County is a pilot project for the new information management system through the Indiana Supreme Court and a pilot project for the Indiana Supreme Court's Family Court Project.

II) The Pro Se Challenge in Indiana

The primary difficulty faced by non-attorneys trying to navigate through the judicial system is that the court system is geared toward individuals who are educated in the law.

Our society has recently began a trend towards the “do-it-yourself” mentality where people will do tasks themselves that traditionally have been limited to individuals who specialize in that trade or profession. People will only contact a plumber, stockbroker, carpenter, or car service garage when the job at hand is far beyond comprehension to the layperson. And people have quite a bit of success saving time and money by undertaking these jobs instead of paying someone else to do it for them.

But the law is an area that is not as friendly to the layperson trying to save themselves money as other areas of commerce. The rules of law may seem convoluted and unusually rigid. The consequence of mistakes many times is not reversible. The pro se usually contemplates putting in a couple of days at most into their case, but a case may take months to complete.

This section discusses the problems areas that the pro se faces in Indiana.

A. Current Data on Pro Se Litigants and Their Needs

Indiana citizens have legal needs that are not currently being met. The available data suggests that there are a significant number of pro se litigants in Indiana, and few resources available to meet these litigants' needs.

i) The United Way /Community Service Council of Central Indiana

In 1991-1992, the United Way /Community Service Council of Central Indiana (UW/CSC) designed and conducted the first statewide study of civil legal needs of the poor in Indiana. The study estimated that the 269,022 Indiana households whose income falls below 125% of the poverty level experience approximately 538,044 potential legal problems in one year. (Legal Needs Study of the Poor in Indiana, Executive Summary, p. 5). The overall conclusion of the study was that less than 10% of the potential legal programs of Indiana's poor are being addressed, and that access to the justice system was a definite problem. (*Id.*, p. 8 - 11.)

In response to this conclusion, the UW/CSC recommended that state and local bar associations should explore alternatives to traditional legal assistance staffed programs, such as use of pro se workshops, and that Indiana courts, under the supervision of the Indiana Supreme Court, should explore the development of easy-to-understand legal forms for pro se litigants. (*Id.*, p.11.)

ii) Indiana Legal Services, Inc.

In 1999, Indiana Legal Services, Inc. (ILS), the largest LSC-funded civil legal aid program in Indiana, began a new study of legal needs. The Indiana University Public

Opinion Lab (the Lab) conducted a statewide telephone and written survey in order to help ILS determine the most critical legal needs of Indiana citizens.

Through its survey, the Lab collected data from a total of 682 persons. The data showed that 45% of the surveyed persons had difficulty obtaining subsidized housing, 18% of renters had experienced unsafe living conditions, 30% had difficulty collecting child support, 26% were being harassed by creditors, and 25% avoided medical care due to lack of money or insurance.

iii) Hendricks Superior Court

Other data suggests that there are already substantial numbers of pro se litigants in Indiana. In preparation for the National Conference on Pro Se Litigation, the Honorable David H. Coleman of the Hendricks Superior Court #2 undertook a survey of Indiana trial court judges in order to determine the current state of pro se efforts in Indiana. Judge Coleman received 166 responses from judges throughout Indiana. The judges who responded to the survey generally agreed that the number of pro se litigants is increasing, that these litigants tend to be poorly prepared and ignorant of the law, and that resources for pro se litigants would be helpful. The survey identified the biggest obstacles to implementing any sort of pro se program or materials to provide even limited assistance to pro se litigants are a lack of funding, trained personnel, and space to establish such initiatives.

Judge Coleman also surveyed the 1998 civil cases from his court (a total of 1,612 cases) in order to gather some statistics about the prevalence of pro se representation in different types of cases. In that court, 98% of its 1,109 small claims cases involved at least one unrepresented litigant. There was at least one pro se party in 56% of general civil cases and in 48% of domestic relations cases. Finally, 89% of protective orders involved no attorney on either side, and another 7% involved only one represented party.

iv) Marion Superior Court

Additionally, the Marion Superior Court in Indianapolis studied 500 domestic relations cases in five superior courts in 2000. Of the 500 cases surveyed, 75% of the cases involved at least one pro se litigant.

B. Lack of Uniformity

Aside from clear evidence of significant numbers of pro se litigants, Indiana's judicial structure further compounds the problem of access for pro se litigants. The courts in each of Indiana's 92 counties operate as independently funded, autonomous bodies. While there are benefits to this structure, each county court system may promulgate their own local rules and procedures, which vary markedly from county to county. For example, in Sullivan County, divorce litigants must file an itemized list of all property and debts in controversy at least ten days prior to trial. In Wayne County, any civil litigant must file a special Trial Readiness Certificate. These individualized rules can change and are not always understandable to lay people. Furthermore, the local rules are not generally readily available to pro se litigants, which make it more difficult for pro se litigants to navigate the justice system.

The variation in court practices by county, or even within a county, results in a lack of uniformity in what few pro se forms and materials are available to litigants. There are no “official” statewide forms available for use by pro se practices. The number and type of forms available in a particular court are wholly dependent on local practices. Over a period of six months in 1998 and 1999, an attorney working with ILS surveyed the pro se forms provided by the clerk's offices in each county. Of Indiana's 92 counties, 84 counties responded to the survey. Eight (8) counties provide no pro se forms at all. Fifty (50) counties provide only protective order and small claims court forms. Upon inspection, many of these forms were outdated, contained erroneous legal citations, and were virtually undecipherable to a layperson. Some of the forms had last been updated in 1991, despite subsequent changes in the laws. Only 19 counties provide divorce forms, and many of them are also outdated, or provide assistance only for limited factual circumstances, such as where the parties have no minor children or assets. The results of this survey show that pro se litigants in some Indiana counties have only a few outdated forms to which to turn, and in other counties, pro se litigants have no access to any forms at all.

The structure of the court system in Indiana necessitates that any uniform pro se forms and initiatives come from the state level; approaching pro se litigation from a state

perspective is the most effective way to ensure that all Indiana courts are accessible to unrepresented litigants.

C. Lack of Existing Pro Se Resources

There are only a few formal pro se assistance programs available throughout the state. Moreover, the funding structure, which governs Indiana courts, limits the ability of courts to develop pro se initiatives. Each court system relies on the elected county government for funding and budget approval. Particularly in smaller, less densely populated counties, the ability of the local courts to establish any sort of pro se assistance is severely restricted

The above examples show that while there is a substantial need to serve pro se litigants in Indiana, there are few resources with which to achieve that goal.

III) Products

The Indiana Supreme Court Pro Se Advisory Committee and the Indiana Supreme Court Pro Se Project succeeded in introducing many resources to assist the pro se. Our goal was to assist everyone involved in the pro se situation. We wanted to vary the services that the different projects offered. This was the best manner to determine what worked best where, and why.

A. Establishment of Pilot Programs

In an effort to narrow the scope of the Project, the Court elected to focus on three major pilot programs in the state for eventual expansion and replication in other Indiana counties. The Court chose these programs based on the diverse populations and areas of the state that they will serve, the differing methods by which they will operate, and the eagerness of the sponsoring entities to break new ground in the area of pro se assistance. The Project provides technical assistance to the evolving pilot programs in terms of pro se resources gathered from other states, pro se litigant data, evaluation mechanisms, and help with funding proposals. A copy of all Committee meeting agendas can be found in Appendix “A.”

i) Tippecanoe County Court System

The Tippecanoe County Court system serves a largely rural population of approximately 140,000, plus the Purdue University student population. The Honorable Gregory J. Donat of the Tippecanoe Superior Court #1 has taken on the leadership role

for this project, in that he participated as an original state team delegate to the Scottsdale and Minneapolis conferences. He currently chairs a pro se committee for Tippecanoe County that is comprised of local members of the bar, representatives of the Legal Aid Society of Tippecanoe County and Indiana legal Services and the local library.

Judge Donat presides over small claims and landlord-tenant cases. With the help of his staff, Judge Donat currently provides a limited resource room for pro se litigants. Judge Donat's bailiff is a licensed mediator (pursuant to ADR Rule 2.3) and she reviews all of their small claims cases in which the parties agree to use a mediator. Over 70% of those small claims cases settle without litigation through use of a mediator. This statistic has encouraged our Committee to advance other mediator projects in other counties.

Judge Donat wishes to expand the pro se services currently offered by housing an information center in the local offices of Indiana Legal Services, Inc. and employing a part-time paralegal to staff the center. ILS and Judge Donat are committed to this project and to raising the funds necessary to employ the proposed paralegal. Judge Donat and representatives of the Tippecanoe Bar have traveled to the Denver District Court in order to gain more expertise regarding court-based pro se assistance programs, and prepared a report based on that data in order to market his proposed program to alternate funding sources.

Additionally, Judge Donat already has been conducting court / clerk staff trainings in Tippecanoe and Hendricks County, and hopes to provide this training curriculum as a model to be used statewide. The first staff training was held on July 17, 2001, and covered the topic of Hispanic culture and the Spanish language. The second clinic was held on August 29, 2001 and discussed the purpose and usefulness of mission statements. On November 20, 2001, Mr. Anthony Zapata discussed the legal advice training manual the Project adopted at their third staff training clinic.

Since its creation in the Spring of 2001, the Tippecanoe County Pro Se Advisory Committee has accomplished several goals. The Tippecanoe County Pro Se Project has created an orientation video that explains the layout of the courthouse, gives tips to litigants on how to prepare for their court date. This video is intended to help the court system become user-friendlier to the average citizen. There have been two community legal clinics, the first being held on September 19, 2001, which covered the topic of

enforcing child support through the Title IV-D program in the prosecutor's office. There are plans for more clinics in the future to be conducted by volunteer members of the local bar.

The Project has provided and will continue to provide assistance to Judge Donat's program in the following ways: 1) by providing research on court-based pro se assistance programs serving similar populations in other states; 2) by providing funds in the amount of \$2760.00 to subsidize the travel costs of Judge Donat's trip to the Denver District Court pro se assistance program; 3) by assisting Judge Donat in preparing a report regarding the need for a pro se information center to serve Tippecanoe County litigants; and 4) by developing an evaluation plan for the information center as it becomes fully operational. The Project has benefited greatly from the Tippecanoe County program, in that it serves as a model for other Indiana counties serving similar populations, highlight potential joint projects between courts and civil legal aid providers, illustrate the ability of a court to create an effective pro se assistance program with little or no resources, and provide a training curriculum for clerk / court staff that can be offered statewide.

ii) Indiana Legal Services, Inc. - Hotline Project

The Monroe County Pro Se Project utilizes the services of Indiana Legal Services, Inc. ILS, formally Legal Services Organization of Indiana, Inc., has recently merged with other Legal Services Corporation grantees and now serves the civil legal needs of the entire state. With the merger and expansion of ILS's service area, ILS eventually will expand its Pilot Hotline Program (the Hotline) to serve all Indiana counties. Telephone calls from persons seeking legal advice will be routed to three major call centers throughout the state; applicants also will be able to walk into remote application sites in each county. Cases then will be routed in one of three ways: 1) Reject cases, such as criminal cases; 2) Advice cases, including pro se advice sessions; and 3) Cases taken by ILS for full representation by an attorney.

The coordinator of the ILS Hotline has designed a centralized intake system for the Bloomington office's 12-county service area. The Hotline has already expanded to include advice services for pro se litigants in Monroe County. A person calls ILS in Monroe County for assistance. If no ILS attorneys can take the case, a pro bono attorney is selected from the ILS pool and the Pro Bono District 10 pool. If no attorneys on either

list are available, Hotline staff will mail packets of pro se forms and instructions to clients with certain legal problems. After having a few days to work through the forms, the pro se litigant will then have the opportunity to schedule a telephone advice session with an ILS or volunteer attorney to review the forms and ask questions about their case.

As described above, pro se assistance is a major component of the Hotline. The Project is committed to working closely with the Hotline in order to develop model forms concerning selected legal problems. Furthermore, the Project will assist the Hotline coordinator in designing an evaluation system for the pro se component of the Hotline. As with the Tippecanoe County program, the Project Director will use the Hotline as a model for the delivery of pro se assistance, in hopes that county-based legal aid organizations and bar associations will adapt similar programs. The Hotline is unique in that it utilizes the resources of volunteer attorneys and legal services providers to assist low-income pro se litigants, and provides an alternative for those counties where the concept of a court-based assistance program is not popular or financially feasible.

iii) Marion Superior Court

The Marion Superior Court serves the large urban area of Indianapolis, handling nearly 90,000 cases per year. One reason for choosing Marion County as a pilot program is the fact that this court system serves a disproportionate amount of Indiana's minority and indigent citizens. Furthermore, the sheer size of Marion County's caseload makes it a potential leader in the state as far as reforming court practices regarding pro se litigants. Currently, the court library receives approximately 10 - 15 requests per day for information by pro se litigants, although the library at this time has few resources to offer these litigants. The Marion County pilot project will serve as a model program for other large, urban counties in Indiana.

Marion County has special problems associated with a large county including severe competition for any available space in the City-County building, where most City of Indianapolis and County of Marion government offices are located. A portion of the library space for the Courts which had been previously been considered as an area that could be utilized by volunteer attorneys if a project was developed to assist pro se litigants, is now under consideration for temporary judicial officer offices.

Marion County remains committed to the Pro se Project. Although Marion County does not have a pro se center available in their courthouse, they are addressing these needs within the confines of other projects that are necessary prior to any pro se center for this large community.

Marion County has implemented the Can/Cannot Legal Advice list developed by the Indiana Supreme Court Pro Se Project in each criminal and civil court. It has also participated in staff training on pro se issues and continues to look at space allocation for a pro se center. They also have the Pro Se Project's pro se forms available and will have a link from the Marion County Judicial website to the Indiana Supreme Court website.

In addition, Marion County is a pilot project for the new information management system through the Indiana Supreme Court. The new system is projected for late 2002, early 2003. In the meantime, the Marion County Court system has hired a consulting firm to completely review the criminal and civil processes. The criminal review is nearly completed and the civil review process involving a team of court employees who meet six hours each week has just begun. The civil review process among many other issues, includes looking at how each court handles pro se litigation and how these procedures can be streamlined, made consistent between the courts and be more consumer friendly.

Lastly, Marion County is a new pilot project for the Supreme Court's Family Court Project. This project is underway with a Family Court Coordinator and several subcommittees. These committees are moving ahead in the areas of ADR, form development, service referral and case bundling. All of these issues involve pro se litigant concerns as well.

B. Development of Uniform Pro Se Forms

As previously noted, there are currently no uniform statewide pro se forms in Indiana other than Protective Order forms. The Project has developed five court forms with instructions that can be used by a person seeking a continuance, a contempt citation, a fee waiver, a name change, or a divorce without children. A copy of these forms can be found in Appendix "B." The local pilot programs are assisting in testing the forms by

providing them to actual pro se litigants. The forms are posted on the Project's website for use by pro se litigants, legal services providers, libraries, and other interested entities.

A major goal of the Project is to develop more pro se forms and instructions that will be used uniformly by all Indiana courts. The Supreme Court has the rule-making authority to propose pro se forms for use in all courts. This is an essential step in the establishment of a statewide pro se initiative, for there is no other mechanism to ensure that individual state courts provide and accept uniform forms.

The Project staff will determine which areas of the law are suitable for the development of more pro se forms. This determination involves an inquiry into both the relative complexity of each legal problem and the need for pro se assistance with that particular problem. Project staff will make this decision based on the available legal needs studies, court data on the numbers of pro se litigants in a given area of law, and exploration into the complexity of the applicable laws.

The Project staff will create more user-friendly, comprehensive pro se forms and instructions for specific legal problems. The Project staff will develop the forms by studying forms in other states, utilizing adult literacy techniques to ensure readability, and revising existing pro se forms used by some courts and legal services organizations.

C. Spanish Self-help Court Forms

We have translated three of our self-service court forms into an English/Spanish format, but there is a need to translate more documents into Spanish. A copy of our Spanish court forms for people seeking a divorce without children or a continuance can found be in Appendix "C." All of the pro se forms and other materials that we produce should be available in Spanish. The Hispanic population is increasing in most Indiana Counties. The language barrier taxes every facet of the legal system.

D. Indiana Self-Service Legal Center

The website offers a variety of legal information. It is located at <http://www.in.gov/judiciary/selfservice/forms.html>. Visual images of the website can found in Appendix "D." It started operating in August 2001. As of April 2002, it had over 23,000 "hits." It has averaged over 80 "hits" per day, and has ranked among the top 10 pages on the Indiana Judiciary Website five times.

The Website has a "legal assistance" section that lists different attorney contact information. We have information for obtaining pro bono attorneys, legal services

attorneys, and bar association attorneys. Although the website is set up to assist the pro se, we stress the importance of obtaining counsel to assist in legal matters throughout the site. We do not encourage pro se representation, but we try to assist in those cases where obtaining an attorney is not an option.

We have a section that discusses the viability of using an Alternative Dispute Resolution, mainly mediation, to settle disputes. We have found through our projects that mediation can be very successful. Cases get settled without a hearing, thus allowing the court more time to dispose of other matters. The pro se usually feels satisfied about their legal matter because they have more input into the final decision when using mediation. A large number of legal matters, especially in small claims courts, can be resolved through mediation because the mediator seeks a middle ground that both sides will be happy with. The attorney cannot do this because attorneys are taught to fight zealously for their client. Suggesting to agree on a middle ground gives the impression that the attorney is not fighting for his or her client as they should be doing.

The website offers Internet links to local, state, and federal court websites. The website also offers internet links to self-service websites in other states, national pro se information, Indiana law and legal dictionary websites, divorce-related websites and language translation websites.

The most requested information we provide on our website are the self-service court forms. When the website started operating in August, we offered court forms with instructions for a “Divorce without Children and Without Assets.” In November, we added court forms with instructions for a “Motion for Fee Waiver,” a “Verified Petition for Continuance,” a “Verified Petition for Contempt,” and a “Verified Petition for a Name Change.”

E. Legal Advice Materials

One of our primary tasks was to help the court staff who interact with the pro se. Court clerks are often the first point of contact with the pro se. The pro se often believes that this person should answer every question that they have. And they usually have many questions because they do not know how to navigate the judicial system. Clerks are then caught in the position of taking time away from their traditional duties to assist a pro se. Furthermore, clerks must determine if not answering questions will run the risk of giving legal advice.

We researched materials that other states provide to their court staff to assist them when dealing with a pro se. We started by creating a sign that could replace the traditional “We do not give legal advice” notice that is posted on many courtroom doors and windows. About one dozen states have adopted a version of this informative sheet that lists the tasks that the clerk can and cannot do for the pro se. These sheets were designed from the writings of John Greacen, a former New Mexico Court Administrator, who now runs a consulting firm. American courts are open to the public. We adopted this sheet because it invites the pro se into the courtroom by informing them that some of their questions can be answered. This is a contrary message from the traditional “no legal advice” notice that tended to impress upon the pro se that they were unwelcome.

We then turned to researching training materials that could assist court staff in determining what questions to answer and what questions not to answer. We concluded that we wanted to use the “Legal Advice” manual that the Michigan Judicial Institute created as a guide. Mr. Zapata coordinated an arrangement with Kevin Bowling, Director of the Michigan Judicial Institute. Indiana was given permission to use the Michigan model. Indiana could place their name on the Michigan model and incorporate Indiana law into the manual by making changes, as long as proper recognition was given to the Michigan Judicial Institute and the proper Michigan copyright remained in place.

The can/cannot sheet and the legal advice manual were distributed to all 92 county clerks in January 2002, to review. An evaluation form was sent along with the legal advice materials that asked general questions about pro se numbers and pro se procedures. Mr. Zapata discussed these materials with the clerks in person at the Northern District and Southern District Indiana Clerks Association meetings, both of which were held in March 2002. We hope that the majority of the clerks will distribute the manual to their employees, and post the can/cannot sheet in their offices and courtrooms, as well as distribute it to pro se individuals.

A copy of the can/cannot sheet and of the legal advice manual can be found in Appendix "F."

F. Libraries

Public libraries are the primary resource of information for the self-represented. Librarians must handle the ethical concerns of not giving legal advice as much as any other public servant. The Project has encouraged public libraries to disseminate our products by sending an e-mail to them via a statewide public library listserv. To our delight, we found that many were already distributing copies of our pro se court petitions before we encouraged them to do so. Many libraries also have direct Internet links to our website. We have also created some pamphlets specifically for libraries that libraries can post and distribute that inform people of our Project and our products. A copy of these pamphlets can be found in Appendix "F."

G. Judicial Conference

On December 7, 2001, the Indiana Judicial Center presented the "Access to Justice for the Self-Represented and Indigent Litigant" at the Adams' Mark Hotel - Indianapolis Airport. The entire judicial conference dealt with the issue of pro se representation.

Mr. Zapata helped Vickie Davis and Anne Jordan of the Indiana Judicial Center coordinate the conference. Several of the Pro Se Advisory Committee members participated in the panel discussions. The project's legal advice materials and our court forms with instructions were distributed to all 222 participants.

Randall T. Shepard, Chief Justice of Indiana, delivered the opening remarks in which he emphasized the importance of assisting the pro se. The pro se topics that were discussed included the role of the judicial officer, the implications to the judicial officer, and the implications to the court staff, Indiana pro bono programs, national trends in pro se projects, and the Indiana Pro Se Project.

The judicial officers were given an evaluation form that asked questions about pro se numbers in their courts and judicial education to deal with the pro se. The responses were encouraging in that they suggested the conference was successful. A copy of the evaluation form a copy of the tally can be found in Appendix "G."

Chief Justice Randall Shepard has also discussed the "Self-Service Legal Center" and the forms on the Internet in his annual State of the Judiciary address on January 16, 2002.

IV) Recommendations

During the last year, the Indiana Supreme Court Pro Se Advisory Committee members have discussed extensively the issues involving pro se litigants, who we prefer to call the self-represented, both within the committee and with others who are affected or share our interests. We have only begun to address the many issues, and there is much that still needs to be done. We offer the following recommendations.

1. The Indiana Supreme Court Division of State Court Administration should continue to have a person on its staff who is responsible for coordinating efforts to assist the self represented, to continue to up-date the Supreme Court's Self-Service web site, and to continue to provide and revise forms to be used as pleadings by the self represented.

Discussion. Continuing to have a Project Director position within the Division of State Court Administration is instrumental in carrying out the objectives of the Indiana Supreme Court Pro Se Project. The Committee has been impressed by the work performed by Anthony Zapata, our Project Director, who has worked tirelessly to achieve the goals set by the Committee. The Committee recognizes that it could not have achieved nearly as much if there had not been someone coordinating its efforts.

Mr. Zapata is a staff attorney in the Indiana Supreme Court Division of State Court Administration. He obtained his undergraduate degree from the University of Texas at Brownsville. He graduated from the Indiana University School of Law in Indianapolis where he served as President of the Hispanic Law Society and was a member of the Dean's Diversity Panel. His Spanish language skills have proven very useful in his career as an attorney. His prior employment history includes managing attorney for the Neighborhood Christian Legal Clinic in Indianapolis and attorney at the Marion County Public Defender Agency. The job description that was advertised for this Director position requested that the candidate be a member in good standing with the Indiana Bar, have a minimum of one year experience in family law matters, possess basic computer skills, have excellent written and oral communication skills, and be able to work independently on diverse tasks.

Mr. Zapata, has a variety of tasks, and his fluency in Spanish will continue to be invaluable as this Project starts to create more products for the Hispanic community. The

Director provides information to the Committee, and organizes and prepares all materials for the Committee meetings. He implements, organizes, and otherwise carries out all the tasks that are generated from the Committee meetings. The Director prepares the initial and final drafts of court forms, pamphlets and other products that the Committee produces. He also maintains and oversees all aspects of the Self-Service Legal Center website.

Keeping the current Director will avoid duplication of efforts by other organizations and will "keep the flame alive." There are many different organizations and projects in the State of Indiana working to develop forms and programs to assist the indigent. These include Administrative District Committees and Legal Services of Indiana. The Project Director is in a unique position to communicate and coordinate.

But more importantly, the Director is the "face" of the Project. He speaks at conferences, meetings, and other venues answering a multitude of questions that are generated because of the huge influx of the self-represented litigants in courts. The Director is the primary source in Indiana for judges, clerks, and court staff that have any questions or comments about the Pro Se Project or about pro se litigants in general.

The Project Director should remain a member of the Indiana Supreme Court Division of State Court Administration. This will continue to allow easy access to court personnel. To ensure adequate funding is available for the Director position and the Project itself, the Project and the State Court Administration should seek funding from outside sources. Applications to a variety of grant sources should be submitted.

A partnership with Indiana Legal Services, Inc. should be examined. ILS is the largest Legal Services Corporation funded civil legal aid program in Indiana, and it is in the current process of launching its own pro se assistance project on the Internet. It operates several offices throughout the state, so we would have identifiable locations where our products could be distributed. Furthermore, it has an infrastructure already in place where in-house counsel can assist the pro se and present community legal clinics.

A primary goal should be a partnership with the Indiana Pro Bono Commission. The Indiana Pro Bono Commission (Commission) is a partnership of the Indiana State Bar Association and Indiana Bar Foundation and consists of 21 members appointed by the Indiana Supreme Court and the Indiana Bar Foundation. The Commission's members

were appointed pursuant to Indiana Rule of Professional Conduct 6.5 and they have the responsibility of allocating IOLTA funds to the 14 District Pro Bono Committees in Indiana. The Indiana IOLTA program funds the implementation of the district plans and the efforts of the District Committees to improve delivery of civil legal services to the lower income population in their district. To date the Indiana Pro Bono Commission has funded nearly \$1,000,000.00 to the 14 Indiana District Committees. A partnership with the Pro Bono Commission should be mutually acceptable because most of the 14 districts are planning to or have already incorporated pro se assistance into their plans and grant applications.

2. The Indiana Supreme Court Pro Se Advisory Committee should continue to exist either in its present form or in a revised body.

Discussion. A committee, board, or commission comprised of judges, lawyers, clerks, law professors, and other persons interested in the issues of the self-represented will be very beneficial to all concerned. The experience and diversity of the present committee have given us different perspectives as we discuss issues affecting the Courts, Clerks, lawyers, and the self-represented. This has been extremely helpful. We have been able to extract and thoroughly discuss the different viewpoints of a particular issue. This has been particularly helpful in developing forms and other documents that have been made available to Courts, Clerks, and the self-represented. Often we have been able to avoid some sensitive and controversial areas and suggest reasonable approaches that Court and Clerk personnel can take in helping the self-represented. The Project Director will be assisted by having such an experienced body to provide advice.

We suggest that any new members of the Committee have either one or two-year terms so that the terms will become staggered. This will avoid a substantial number of new members in any given year. Many of the issues that we have addressed, and that still need to be addressed, affect lawyers to one degree or another. The insight of the Bar Association will be helpful and communication with the Bar should be enhanced.

3. Our Indiana Judges need to continue to receive education and training to help them resolve their problems in dealing with the self-represented.

Discussion. The Indiana Judicial Center has presented continued legal education seminars for Judges to better understand the challenge of litigation by the self-

represented. There is a need for the education and training to continue. Other than the Indiana Judicial Center, there are few judicial training resources to assist Judges when they have a case in which there is a self-represented litigant. We need to develop standards or guidelines for judges to be able to refer to when the need arises.

We should look at developing judicial education that leans towards practical advice and not just legal scenarios. Judges have many questions concerning ethical problems, and those questions need to be continually addressed. But Judges are also searching for techniques and management tools to help them in cases involving the self-represented. The self-represented have more assistance than ever before. Forms are readily available, and more often than not, they are accurately completed. But often the litigants are not prepared to present their cases in Court. There are Judges who no doubt have developed practices that will be helpful to other Judges. The Judicial Center should be encouraged to provide educational programs on practical techniques and management tools. This may alleviate frustration that judges may have in dealing with the self-represented.

Furthermore, continued information will also ensure meaningful access to justice by the self-represented. The Judicial Center can continue to provide meaningful educational programs and draw on the resources of the Indiana Supreme Court Pro Se Advisory Committee, the Indiana Pro Bono Commission, Indiana Legal Services, Inc., and other statewide entities that assist the indigent.

The judicial officers of Indiana need ethical guidance from the Indiana Commission on Judicial Qualifications. This Commission issued an Advisory Opinion in 1997 (#1-97) that assisted the pro se movement. It opined that a judge's ethical obligation to treat all litigants fairly obligates the judge to ensure that a pro se litigant in a non-adversarial setting is not denied the relief sought only on the basis of a minor or easily established deficiency in the litigant's presentation. A request should be made to the Commission on Judicial Qualifications to provide an opinion to guide judges when only one side is represented by counsel, when neither side is represented by counsel, and when there are other difficult situations with the self-represented in the courtroom.

4. Clerks, their staff, Court Reporters, and other Court personnel need continual education and support in working with the self-represented.

Discussion. The Clerks of the Courts and their staffs are on the front lines in dealing with the self-represented. Too often the first person that a self-represented litigant meets is the youngest or newest person in the Clerk's Office, and too often the self-represented litigant receives an impression of the judiciary from the least informed person in the Clerk's Office. Also, after a self-represented litigant has filed a case, the Court Reporters and other staff personnel in Chambers are often asked questions in person or by phone by the self-represented.

Director Zapata has been very successful in traveling to different Clerk's Offices in Indiana to provide training. He has been well received and his training has been appreciated. The work of the Pro Se Advisory Board has gained acceptance by many as a result of his efforts. The Project Director has also developed materials to help Clerks and Court Reporters and other staff personnel to better understand the difference between legal information and legal advice. Additional materials need to be developed. Continual staff training needs to be performed both at courthouses and at state conferences for Court Reporters and Clerks. Because of the high turnover in these positions, there will need to be continual education and training on how to deal appropriately with the self-represented. We need to remind ourselves, too, that often in the small towns and rural areas the Clerk's and Court's personnel may know the litigants personally. Continual training is essential so that Court Reporters and Clerks know and remember what is proper and what is not.

5. Ethical concerns involving the issues of "unbundling" of legal services and the "unauthorized practice of law" need to be addressed.

Discussion. At present, it is confusing whether or not it is ethical for a lawyer to help a self-represented party in a divorce proceeding write a Settlement Agreement even if there is no dispute between the parties. There is a perception that a lawyer must be either in the case or out. Nevertheless, it is apparent that many lawyers have written Settlement Agreements for a party in a divorce proceeding who is self-represented in court. Perhaps this has been done because the lawyer is not aware of the ethical issue. Often a Judge has two self-represented parties in a divorce proceeding. They may relate to the Judge that they have an agreement and there is no dispute. Often there are children of the parties, and the parties are unable to articulate the necessary information or write a

satisfactory agreement. The case is continued and then a professionally prepared Agreement is submitted but the drafter is unknown. This is commonly known as “ghost writing.”

Some states have by rule or statute authorized this "unbundling" of services so that a lawyer may represent a party on only one issue without becoming involved in the case start to finish. It will assist the self-represented if Indiana adopts a position permitting the unbundling of legal services, thereby permitting a lawyer to help an individual with a certain part of the case but not all of the case. If unbundling is permitted, more low income people will be able to hire counsel, and lawyers will be able to volunteer at hotlines, legal clinics, and participate in other free or reduced fee projects without the fear of being ordered to represent all of the client's legal matters.

Similarly, "the unauthorized practice of law" should be defined. A definition will permit Court personnel to provide information without the fear that they are giving advice. Often Court personnel and Clerk personnel hesitate to answer questions because they fear they may engage in the unauthorized practice of law. But Judges should be able to authorize certain trained individuals on Court or Clerk staff to answer questions that will help citizens. These individuals need to be trained to know the difference between legal information and legal advice, but nevertheless the distinctions may be blurred. A definition of the "unauthorized practice of law" will be helpful not only to pro se individuals, but to practicing attorneys as well. Attorneys need ethical guidance in this area because they risk being disciplined by the Bar for wrong decisions.

The Indiana State Bar Association (ISBA) has recently convened a Committee to devise a definition for the “Unauthorized Practice of Law (UPL).” Mark Peden, an ISBA representative who recently joined our Pro Se Advisory Committee, also serves on the ISBA’s UPL Committee.

6. The Supreme Court Self-Service web site needs to be maintained and expanded.

Discussion. The Supreme Court Self-Service web site has been very well received. It includes forms that have been developed by the Indiana Supreme Court Pro Se Advisory Committee. One of the most frequent comments received by the Committee is that more Court forms are needed. And the existing forms need to be reviewed and revised from time to time.

Although different counties have had their own forms on different subjects, and although different counties have their own local rules about what forms will be accepted, the existence of the Pro Se Advisory Committee forms on the Supreme Court web site

gives the forms the appearance of approval of the forms by the Supreme Court. The Committee recognizes that it will be helpful to have the Supreme Court approve forms so that every Court in Indiana will accept every form on the Supreme Court web site. Even so, an expanded and maintained Self-Service Legal Center on the Supreme Court's web site will promote the acceptance of the forms in every Indiana Court. The continued development of standard forms and instructions will enhance the ability of Courts to provide meaningful assistance to the self-represented.

Also, the Self-Service Legal Center has become a resource center for organizations and Courts wanting to improve the access to justice. It can continue to develop and distribute materials that will explain Court procedures, and provide information that will be helpful to those organizations and Courts.

The website is located at <http://www.in.gov/judiciary/selfservice/forms.html>. It started operating in August 2001. As of April 2002, we had over 23,000 “hits.” It has averaged over 80 “hits” per day, and has ranked among the top 10 pages on the Indiana Judiciary Website five times.

The Project should consider working closely with Indiana Legal Services, Inc. and its new Technology Initiative Grant Project. The goal of this project is to provide information and assistance to pro se litigants and pro bono attorneys to increase access to justice in Indiana via a soon to be launched website. This website will provide a document assembly program, pro se information, and a pleading bank for pro bono attorneys.

7. The public libraries in the State of Indiana need to be included in the dissemination of forms, instructions, and information for the use of the self-represented.

Discussion. Almost every community in the State has a public library, and the public libraries have a network that facilitates the dissemination of information. Stating the obvious, there are more libraries than Courthouses. Often the self-represented will be more comfortable going to a library than a Courthouse to obtain information. The Project Director should be encouraged to continue to provide information to central library administrators such as the pamphlet and poster created specifically for distribution to libraries. Local courts should be encouraged to provide forms with instructions, and

educational pamphlets to local libraries. Librarians must also deal with the Unauthorized Practice of Law ethical issue. There should be continual training in this area for librarians too.

8. Self-help Centers, such as in Tippecanoe County and Hendricks County, are effective in promoting access to justice and local Courts should be encouraged and assisted in developing similar Self-help Centers.

Discussion. More pro se projects and self-help centers must be started at a local level. Although the Self-Service Legal Center on the Supreme Court web site is a highly effective way to provide information and assistance to the self represented, we should be mindful that there are too many who do not have access to computers and who won't go to public libraries. To reach these citizens and to further promote access to justice, local Courts should be encouraged to develop a Self-help Center in or near their Courts. These Self-help Centers can provide forms with instructions, helpful hints, and often videos that will inform and instruct. The efforts of Judge Greg Donat of Tippecanoe County and Judge David Coleman of Hendricks County in developing Self-help Centers in their counties should be applauded, and other counties should be encouraged to develop similar centers.

One priority should be to start pro se projects by coordinating with the 14 Pro Bono Districts in Indiana. Modeled after the Monroe County program, pro bono programs and pro se programs should work together to reach the most citizens possible. People call ILS at their toll free number of 877-323-6260 when seeking legal representation. If an attorney cannot be found to assist the litigant through the pro bono or legal services route, then we direct them to the local self-service center.

We must work with the bar associations to develop a reduced fee consultation project. A pro se litigant that consults with an attorney for a half-hour will be much better prepared for their court hearing than a pro se who has not discussed his or her case with an attorney. Plus, this would give attorneys publicity and experience.

9. Courts in Indiana need to continue to develop means to respond to the growing Hispanic population.

Discussion. The Hispanic population is increasing in most Indiana Counties. The

language barrier taxes every facet of the legal system. Continued coordination with the networks that address Hispanic concerns is essential. We have translated three of our self-service court forms into a Spanish/English format, but there is a need to translate more documents. All of the forms and materials should be available in Spanish. Further, there is a need to provide information to Courts and other legal services agencies concerning the availability of translators throughout the State.

Conclusion

This project will benefit the large numbers of pro se litigants in Indiana by providing them with new resources such as pro se forms and staff assistance programs. The Project will enable court systems to improve their delivery of justice by ensuring open access to all litigants. The Project must continue its current programs and has many new tasks that need to be realized. Only after these goals are achieved will the Project have an adequate basis to expand its services to a statewide level.